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7 BEFORE THE STATE OF WASHINGTON
8 ENERGY FACILITY SITE EVALUATION COUNCIL

9 In the matter of the petition of FPL Energy Inc.
10 for a declaratory order

NO.

11 PETITION FOR DECLARATORY
12 ORDER

13 Petitioner FPL Energy, Inc. ("FPL Energy") , pursuant to RCW 34.05.240 and
14 WAC 463-34-080, hereby petitions the Energy Facility Site Evaluation Council ("EFSEC" or
15 "Council") for a declaratory order with respect to the applicability of Chapter 80.50 RCW to
16 the construction of two separately owned and developed power plants, neither of which when
17 constructed will exceed the jurisdictional threshold for certification in RCW 80.50.020(14)(a).

18 I NAME AND IDENTITY OF PETITIONER

19 1.1 Petitioner FPL Energy is a duly authorized Florida corporation with corporate
20 offices in Juno Beach, Florida. FPL's corporate office address is P.O. Box 14000, Juno Beach,
21 Florida, 33408-0420. FPL Energy's representative in this matter is Derrel Grant. FPL
22 Energy's legal representative in this matter is Williams, Kastner & Gibbs PLLC, Charles
23 Maduell, P.O. Box 21926, Seattle, Washington 98111-3926, telephone 206-628-6600, fax 206-
24 628-6611. Mr. Maduell's direct line is 206-628-6669.

25 PETITION FOR DECLARATORY ORDER - 1

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1 1.2 FPL Energy owns the controlling ownership and management interest in
2 Northwest Power Company, LLC, owner and developer of a proposed 248 megawatt water-
3 cooled, natural gas combined cycle generating facility to be located at 121 Marine View Drive
4 in the City of Everett, Washington (“Everett Delta I”). Wasserstein Perella & Co., Inc.
5 (“Wasserstein Perella”) owns the controlling ownership and management interest in Northwest
6 Power Finance LLC, owner and developer of a nearly identical power plant to be located on an
7 adjoining lot at the same address (“Everett Delta II”).

8 1.3 FPL Energy is in the process of developing the Everett Delta I Power Project
9 and Wasserstein Perella is in the process of developing the Everett Delta II Power Project.
10 Because it would be advantageous for the two power plant projects to share certain facilities,
11 FPL Energy and Wasserstein Perella have been exploring opportunities to share the cost,
12 construction and operations of common facilities for their mutual benefit. It is unclear whether
13 and to what extent sharing common facilities would trigger the applicability of the site
14 certification provisions of Chapter 80.50 RCW to the two facilities, notwithstanding the fact
15 that both facilities are fully permitted and neither alone would be subject to EFSEC
16 jurisdiction, which has created uncertainty that necessitates resolution by the Council before
17 FPL Energy can proceed with development of Everett Delta I. FPL Energy is prejudiced or
18 likely to be prejudiced by this uncertainty and the adverse effect of such uncertainty on the
19 Petitioner outweighs any adverse effects, if any, on others or the general public that may arise
20 from the order requested.

21 II STATUTORY PROVISIONS AT ISSUE

22 The following statutory provisions are brought into issue by this Petition:

23 2.1 Whether two “one-on-one” power plants of less than 350 megawatts of
24 electrical generating capacity each, separately owned, developed and operated on adjoining
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lots, constitute a single “energy facility” pursuant to RCW 80.50.020(10) and are therefore subject to the site certification provisions of Chapter 80.50 RCW pursuant to RCW 80.50.060(1) and RCW 80.50.020(14) if the following common facilities are shared: control room (with separate controls for each facility); administrative building, information technology infrastructure; switch yard/electrical interconnections, and natural gas fuel supply equipment.

2.2 Whether two power plants of less than 350 megawatts of electrical generating capacity each, separately owned, constructed and operated on adjoining lots, constitute a single “energy facility” pursuant to RCW 80.50.020(10) and are therefore subject to the site certification provisions of Chapter 80.50 RCW pursuant to RCW 80.50.060(1) and RCW 80.50.020(14) if, in addition to sharing a control room (with separate controls for each facility), an administrative building, information technology infrastructure, switch yard/electrical interconnections, and natural gas fuel supply equipment, the two facilities share a 190 megawatt steam turbine located on the property of one facility and owned by that facility owner, which would purchase steam generated by the other facility.

III FACTUAL BACKGROUND AND ALLEGATIONS

3.1 In 1997, Northwest Power Company LLC obtained permits from the City of Everett, the Puget Sound Clean Air Agency, and the Washington Department of Ecology to develop a 248 megawatt natural gas fired combined cycle power plant, known as the Everett Delta Power Plant (“Everett Delta I”), on Lot 1 of the binding site plan for the former Weyerhaeuser Company Kraft pulp mill site at 121 East Marine View Drive in the City of Everett. The land use and zoning approvals obtained for Everett Delta I include a special property use permit from the City, a mitigated determination on non-significance (“MDNS”) under the State Environmental Policy Act (“SEPA”), a waste discharge permit from the Everett

1 Department of Public Works, and an air quality permit from the Puget Sound Clean Air
2 Agency.

3 3.2 The approved Everett Delta I facility is a 248-megawatt combined cycle “one-
4 on-one” facility, which includes a combustion turbine, a heat recovery steam generator with a
5 150-foot exhaust stack, a steam turbine, an administration building, a parking lot, and a cooling
6 tower.

7 3.3 Natural gas is proposed to be delivered to Everett Delta I via a 20-inch diameter
8 high-pressure gas distribution line approximately 9 miles in length connecting Everett Delta I
9 to a major gas distribution line near the City of Lake Stevens. This pipeline, which was
10 originally proposed to be constructed by Puget Sound Energy, Inc., is now proposed to be
11 constructed by Williams Pipeline Company. Electricity generated by the Everett Delta facility
12 would be transmitted from the site via Snohomish PUD transmission lines.

13 3.4 FPL Energy purchased the controlling interest in Northwest Power Company
14 LLC, owner of Everett Delta I, on September 30, 1998. FPL Energy has commenced
15 construction of Everett Delta I by undertaking some demolition work on Lot 1.

16 3.5 In 1999, the Everett Delta II Power Company LLC obtained permits from the
17 City of Everett, the Puget Sound Clean Air Agency and the State Department of Ecology for
18 the development of a separate 248 megawatt power plant (Everett Delta II) on Lot 2A of the
19 binding site plan of the former Weyerhaeuser Company mill site, immediately adjacent to the
20 lot on which Everett Delta I is to be located. The land use and zoning approvals for the Everett
21 Delta II facility include a special property use permit, issuance of an MDNS under SEPA, a
22 waste water discharge permit, and an air quality permit.

23 3.6 The site of the Everett Delta II facility had originally been committed to an
24 industrial paper de-inking plant that would utilize cogeneration energy from Everett Delta I.

1 When that industrial proposal failed in 1999, and with it the cogeneration potential, Northwest
2 Power Enterprises, then owner and manager of the Everett Delta II Power Company, applied
3 for and obtained permits to develop Everett Delta II.

4 3.7 The approved Everett Delta II facility is also a 248-megawatt combined cycle
5 “one-on-one” facility, which includes a combustion turbine, a heat recovery steam generator
6 with a 110-foot exhaust stack, a steam turbine, an administrative building, a parking lot, and a
7 cooling tower. It also will receive natural gas from the proposed 9-mile lateral gas pipeline and
8 transmit electricity from the facility via Snohomish PUD transmission lines.

9 3.8 On June 14, 2000, Wasserstein Perella acquired through foreclosure all
10 ownership interest in Everett Delta II Power Company LLC, which then owned Everett Delta
11 II. Wasserstein Perella has the controlling ownership interest in Northwest Power Finance
12 LLC, the current owner of Everett Delta II. FPL Energy has no ownership interest in Everett
13 Delta II or Northwest Power Finance LLC. At this time, Everett Delta I and Everett Delta II
14 are separate and distinct projects and are intended to remain so.

15 3.9 Pursuant to RCW 80.50.060(1), the facility site certification provisions of
16 Chapter 80.50 RCW apply to construction of “energy facilities” that meet or exceed the
17 capacities set forth in RCW 80.50.020(14). An “energy facility” is defined to include an
18 “energy plant” which is further defined to include a “stationary thermal power plant with
19 generating capacity of three hundred fifty thousand kilowatts or more, measured using
20 maximum continuous electric generating capacity, less minimum auxiliary load, at average
21 ambient temperature and pressure.” RCW 80.50.020(10),(14).

22 3.10 At this time, since Everett Delta I and Everett Delta II are separately owned and
23 fully permitted and are currently proposed to be independently constructed and operated as
24 stand alone energy plants, neither constitutes an “energy facility” within the meaning of RCW
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1 80.50.060(1) and thus neither facility as currently proposed is subject to the site certification
2 provisions of Chapter 80.50 RCW.

3 3.11 Because of the proximity in location and potential time of development of the
4 Everett Delta I and Everett Delta II facilities, FPL Energy and Wasserstein Perella have been
5 exploring ways to improve the costs and efficiencies of their respective plants by sharing
6 certain common facilities and components. Both from the standpoint of cost efficiencies and
7 environmental benefits, it would make sense for these two facilities to share certain facility
8 components. They could do so and still maintain their status as two independently owned and
9 operated power plants. For example, by sharing certain support functions and facilities, such
10 as a stormwater detention pond, parking lot, cooling towers, an administrative building and a
11 control room, the two facilities could operate more cost effectively but with less environmental
12 impact. Similarly, if one facility constructed a larger steam turbine, the other facility could
13 eliminate a steam turbine and sell the steam generated by its single combustion turbine to the
14 other facility. In doing so, neither facility would be dependent on the other and each would
15 maintain separate ownership and control.

16 3.12 Although it is clear that the two facilities, as currently owned and as proposed to
17 be constructed and operated, are not subject to the facility site certification provisions of
18 Chapter 80.50, it is not clear whether and to what extent separately owned and operated
19 facilities such as these can share facility components without being considered a single energy
20 facility for purposes of RCW 80.50.060(1) and 80.50.020(14). On this issue, there is a
21 complete lack of any statutory, regulatory or administrative guidance or direction. Because of
22 the high upfront costs associated with the purchase and development of energy facilities, it is of
23 critical importance to the owners of Everett Delta I and Everett Delta II to be able to
24 reasonably predict the costs of bringing these facilities on line in volatile and uncertain market
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1 conditions. Uncertainty about the ability to share certain common facility components without
2 risking the re-permitting through the EFSEC process of these already fully permitted facilities
3 is delaying FPL Energy's construction of Everett Delta I, for resolution of this issue could
4 affect the ultimate design and construction of both facilities.

5 3.13 At this time FPL Energy owns one of two separately owned and fully permitted
6 energy plants on adjoining lots, both of which can be constructed as almost identical "one-on-
7 one" facilities. Because of the financial and environmental benefits of having these two energy
8 plants share some common support facilities, and the legal uncertainty about whether and to
9 what extent this can be accomplished without subjecting these two fully permitted energy
10 plants to an additional and unnecessary site certification process under Chapter 80.50 RCW,
11 Petitioner seeks assurance from the Council that Everett Delta I can be constructed and
12 operated in such a cost-effective manner under the existing permits.

13 IV RELIEF REQUESTED

14 4.1 Petitioner requests an order or declaration from the Council that Everett Delta I
15 is not and will not become subject to the site certification provisions of Chapter 80.50 RCW if
16 Everett Delta I and Everett Delta II, while remaining separately owned and operated power
17 plants in which neither plant will have a generating capacity exceeding 350 megawatts, share
18 the following common facility components: a 190-megawatt steam turbine owned by FPL
19 Energy and located on the property of Everett Delta I, which would purchase steam generated
20 by Everett Delta II; a control room (with separate controls for each facility); an administrative
21 building; switch yard/electrical interconnections, information technology infrastructure; and
22 fuel supply equipment.

23 4.2 In the alternative, Petitioner requests an order or declaration from the Council
24 that Everett Delta I is not and will not become subject to the site certification provisions of
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1 Chapter 80.50 RCW if Everett Delta I and Everett Delta II, while remaining separately owned
2 and operated “one-on-one” power plants in which neither will have a generating capacity
3 exceeding 350 megawatts, share the following common facility components: a control room
4 (with separate controls for each facility); an administrative building; switch yard/electrical
5 interconnections, information technology infrastructure; and fuel supply equipment.

6 RESPECTFULLY SUBMITTED this __13th_ day of June, 2001.

7 WILLIAMS, KASTNER & GIBBS PLLC
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9 By _____/s/
10 Charles E. Maduell
11 WSBA #15491

12 Representatives for Petitioner FPL Energy Inc.
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